

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

THOMAS DAVID SIDES,  
Plaintiff,

v.

DR. SEYED S. HOSSEINI, et al.,  
Defendants.

Case No. CV 22-08334-DMG (GJS)

**ORDER DISMISSING ACTION  
WITHOUT PREJUDICE**

On November 14, 2022, Plaintiff filed a *pro se* civil rights complaint and a request to proceed without prepayment of the full filing fee. [Doc. # 1–2.] On December 5, 2022, the Court dismissed the complaint with leave to amend due to various identified defects and deferred ruling on the request. [Doc. # 4.]

On February 8, 2023, Plaintiff filed a First Amended Complaint. [Doc. # 9.] On March 10, 2023, the Court granted Plaintiff’s request. [Doc. # 10.] Service of process was ordered. Two of the Defendants thereafter filed motions to dismiss the First Amended Complaint. [Doc. ## 26, 38.] Following briefing, United States Magistrate Judge Gail J. Standish issued a Report and Recommendation [Doc. # 49], which found that: one named Defendant (Dr. Saroj Gulani) should be dismissed without prejudice for failure to serve process; another Defendant (Dr. Alan Delman) should be dismissed with prejudice, because the First Amended Complaint failed to

1 state, and could not state, a viable claim for relief against him; and the First  
2 Amended Complaint also failed to state a viable Eighth Amendment-based *Bivens*  
3 claim for relief against the third Defendant (Dr. Seyed S. Hosseini) but that leave to  
4 amend should be granted as to this Defendant. Plaintiff did not file Objections to  
5 the Report. On June 6, 2024, the Court issued an Order accepting the Report and  
6 dismissing the First Amended Complaint with leave to amend to allow Plaintiff to  
7 attempt to plead an Eighth Amendment-based *Bivens* claim for relief against  
8 Defendant Dr. Hosseini. [Doc. # 50, “June 6 Order.”] The June 6 Order advised  
9 Plaintiff that if he wanted to have this case proceed, he must file a Second Amended  
10 Complaint within 30 days that corrects the defects of the First Amended Complaint  
11 identified in the Report.

12 The Second Amended Complaint was required to be filed by no later than  
13 July 6, 2024. To date, a Second Amended Complaint has not been filed. It is now  
14 well past Plaintiff’s deadline for complying with the June 6 Order, and he has not  
15 done so, nor has he requested an extension of time to do so or otherwise  
16 communicated with the Court.

17 Rule 41(b) of the Federal Rules of Civil Procedure grants federal district  
18 courts the authority to *sua sponte* dismiss actions for failure to prosecute. *Link v.*  
19 *Wabash R. Co.*, 370 U.S. 626, 629-30 (1962). In determining whether dismissal for  
20 lack of prosecution is proper, a court must weigh several factors, including: (1) the  
21 public’s interest in expeditious resolution of litigation; (2) the court’s need to  
22 manage its docket; (3) the risk of prejudice to defendants; (4) the availability of less  
23 drastic sanctions; and (5) the public policy favoring the disposition of cases on their  
24 merits. *In re Phenylpropanolamine (PPA) Prods. Liab. Litig.*, 460 F.3d 1217, 1226  
25 (9th Cir. 2006).

26 In this case, the fifth factor, the general policy favoring resolution of cases on  
27 the merits, cannot be said to favor retention of this action on the Court’s docket. As  
28 explained in the Report, the First Amended Complaint was defective in its entirety.

1 While the Report recommended that leave to amend be granted to allow Plaintiff to  
2 attempt to plead a viable Eighth Amendment-based claim against one Defendant  
3 only, the Magistrate Judge noted that absent substantial amendment and  
4 clarification, Plaintiff's vague, uncertain, and inconsistent allegations, read in light  
5 of the First Amended Complaint's incorporated exhibits, could not plead a plausible  
6 theory for relief. The Court agrees that there is substantial doubt that the defects  
7 identified in the Report could be rectified with amendment. Apparently Plaintiff  
8 concurs, given his failure to attempt amendment. *See In re PPA Prods. Liab. Litig.*,  
9 460 F.3d at 1228 ("this factor lends little support to a party whose responsibility it is  
10 to move a case toward disposition on the merits but whose conduct impedes  
11 progress in that direction").

12 Plaintiff's noncompliance with the June 6 Order necessarily implicates both  
13 the public interest in the expeditious resolution of litigation and the Court's need to  
14 manage its docket efficiently, the first and second factors. *See In re PPA Prods.*  
15 *Liab. Litig.*, 460 F.3d at 1227; *see also Yourish v. California Amplifier*, 191 F.3d  
16 983, 990-91 (9th Cir. 1999) ("the public's interest in expeditious resolution of  
17 litigation always favors dismissal"). There is no extant operative complaint in this  
18 action due to Plaintiff's inaction, and thus, the case is stalled and unable to proceed.

19 The third factor – possible prejudice to the opposing party – is, at best, neutral  
20 to Plaintiff. While there is no evidence that Plaintiff's actions have resulted in any  
21 actual prejudice to Defendants as yet, "[t]he law ... presumes prejudice from  
22 unreasonable delay." *In re PPA Prods. Liab. Litig.*, 460 F.3d at 1227.

23 In addition, the fourth factor favors dismissal. Plaintiff has been told what he  
24 needs to do to allow this case to survive, but he appears to lack any further interest  
25 in pursuing this case. Under these circumstances, dismissal is appropriate.

26 A balancing of these factors thus leads to the conclusion that dismissal  
27 without prejudice, pursuant to Rule 41(b), is warranted. *See Ferdik v. Bonzelet*, 963  
28 F.2d 1258, 1263 (9th Cir. 1992) (dismissal appropriate when strongly supported by

three factors); *Malone v. United States Postal Serv.*, 833 F.2d 128, 133 n.2 (9th Cir. 1987) (dismissal appropriate when supported by four factors).

Accordingly, for the foregoing reasons, IT IS ORDERED that this action is dismissed without prejudice, pursuant to Rule 41(b) of the Federal Rules of Civil Procedure.

**IT IS SO ORDERED.**

DATED: November 7, 2024

  
DOLLY M. GEE  
CHIEF U.S. DISTRICT JUDGE

Presented by:

  
GAIL J. STANDISH  
UNITED STATES MAGISTRATE JUDGE